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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,640	01/23/2001	Wim Sweldens	14	3436

22046 7590 09/05/2003

LUCENT TECHNOLOGIES INC.  
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HOLMDEL, NJ 07733

EXAMINER

MCCLELLAN, JAMES S

ART UNIT PAPER NUMBER

3627

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/767,640

Applicant(s)

SWELDENS, WIM

Examiner

James S McClellan

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

1. Applicant's submission of an IDS on 3/02/01 is acknowledged and has been fully considered as indicated by the signed/initialed PTO-1449 included with this Office Action.

### *Claim Rejections - 35 USC § 101*

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 17-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is with the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to the social sciences) and therefore are found to be non-statutory subject matter. For a process, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claim 17 fails to advance the technological arts by reciting the technology needed to carry out the claimed process. The steps of claim 17 can be carried out

Art Unit: 3627

manually or by hand. The examiner recommends adding a limitation to the body of the claim that states that the process is carried out by a computer or on a computer network.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art as set forth in Figure 1 (hereinafter "Admitted Prior Art") in view of U.S. Patent Publication No. 2002/0073013 A1 (Haddad)

The Admitted Prior Art discloses a method for distributing file content via one or more cache providers (30, 35, 40), wherein content providers directly purchase cache resources from said cache providers. Additionally, the Admitted Prior Art discloses redirecting download requests that were initially directed to a content provider, such that the requests will be redirected to at least one contracted cache provider.

The Admitted Prior Art fails to disclose content providers purchasing cache from a third-party market entity allowing at two or more distinct cache providers to collectively provide for servicing of download requests, wherein a fee is charged by said cache providers based on a downloaded bandwidth.

Art Unit: 3627

Haddad teaches trading bandwidth in an open exchange, wherein allowing multiple cache providers to service the needs of content provider in multiple desired locations (see page 2, paragraph 017)

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Admitted Prior Art with bandwidth exchange market as taught by Haddad, because an open exchange will provide lowest cost and best service benefits for the participants.

### *Conclusion*

5. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Huttenlocher et al. is cited of interest for disclosing a system for trading commodities including bandwidth.

Fortman et al. is cited of interest for disclosing an exchange that allows buyers to purchase bandwidth.

Morris is cited of interest for disclosing a system that provides an exchange for trading bandwidth.

Sibley, Jr. is cited of interest for disclosing an international commodity trade exchange.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jim McClellan whose telephone number is (703) 305-0212. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

Art Unit: 3627

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703) 308-5183.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

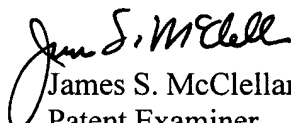
Any response to this action should be mailed to:

Commissioner of Patent and Trademarks  
Washington D.C. 20231

or faxed to:

(703) 305-7687 (Official communications) or  
(703) 746-3516 (Informal/Draft communications).

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,  
Arlington, VA, 7<sup>th</sup> floor receptionist.

  
James S. McClellan  
Patent Examiner  
A.U. 3627

jsm  
September 2, 2003